

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

DARRYL FIELDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-16-213-KEW
	)	
BNSF RAILWAY COMPANY,	)	
a corporation,	)	
	)	
Defendant.	)	

O R D E R

This matter comes before the Court on Defendant's Tenth Motion in Limine (Docket Entry #172). Defendant BNSF Railway Company ("BNSF") seeks to preclude Plaintiff from suggesting to the jury that proof that BNSF committed "slight negligence" will satisfy the required showing to prove negligence under FELA. Plaintiff counters that it will follow the prevailing precedent.

The legal question presented is whether BNSF owes its employees a heightened duty under FELA. The Supreme Court in CSX Transp., Inc. v. McBride, 564 U.S. 685, 703 (2011) set out the railroad's duty in finding

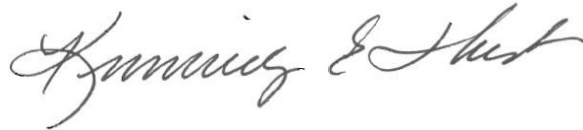
The jury, therefore, must be asked, initially: Did the carrier "fail to observe that degree of care which people of ordinary prudence and sagacity would use under the same or similar circumstances[?]" . . . . In that regard, the jury may be told that "[the railroad's] duties are measured by what is reasonably foreseeable under like circumstances."

The legal standard under FELA by which BNSF's duty,

foreseeability and causation will be established in the jury instructions at trial. To the extent BNSF seeks to preclude Plaintiff from minimizing the required showing to prove negligence, such a representation of "slight negligence" being sufficient would misrepresent the legal standard and would not be permitted at trial.

IT IS THEREFORE ORDERED that Defendant's Tenth Motion in Limine (Docket Entry #172) is hereby **GRANTED** to the extent that Plaintiff shall not deviate from the legal requirements of CSX Transp., Inc. v. McBride, 564 U.S. 685 (2011) in representing his required showing under FELA.

IT IS SO ORDERED this 27<sup>th</sup> day of September, 2021.

A handwritten signature in cursive script, appearing to read "Kimberly E. West", written in dark ink.

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KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE